No. 75-1184

In the Supreme Court of the United States

OCTOBER TERM, 1975

PEGGY J. CONNOR, ET AL., PETITIONERS

v.

J. P. COLEMAN, UNITED STATES CIRCUIT JUDGE, ET AL.

ON MOTION FOR LEAVE TO FILE AND ON PETITION FOR A WRIT OF MANDAMUS

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

This brief is submitted by the United States[1] in response to petitioners' Motion for Leave to File Petition for a Writ of Mandamus.

OPINION BELOW

The January 29, 1976, order of the district court is reprinted as Appendix A to the petition (Pet. App. 1a-2a).

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1651(a).

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[1] The United States was permitted by the district court to intervene as a party plaintiff on June 11, 1975 (Pet. App. 83a).

QUESTION PRESENTED

Whether mandamus should issue to compel the district court to proceed to formulate a reapportionment plan for the Mississippi legislature and to order that any necessary special elections be held prior to the convening of the 1977 legislative session.

STATUTORY PROVISION INVOLVED

28 U.S.C. 1651(a) provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT

A. INTRODUCTION AND SUMMARY

Plaintiffs have been engaged in litigation regarding the apportionment of the Mississippi legislature since October 1965. The district court, in 1967 and in 1971, and this Court, in 1975, invalidated reapportionment plans devised by the state, and, as a result, the district court has been required to formulate its own plans for the 1967, 1971, and 1975 elections. In 1971 and 1975, the district court devised a temporary plan for the upcoming elections because the court concluded that lack of time, resources, and necessary data precluded formulation and implementation of a satisfactory final decennial plan prior to the elections.

In formulating the plan used for the 1975 elections, the district court acknowledged the inadequacies of its formulation and, thereafter, indicated an intention to replace that plan with a final plan by February 1976,

so that any special elections could be held coincident with the November 1976 presidential election. That court, however, has now ordered a halt to further proceedings until this Court decides three pending cases.[2] The 1977 session of the Mississippi legislature is scheduled to begin on January 4, 1977. The next regularly scheduled elections for the legislature are to be held in 1979.

B. PROCEDURAL HISTORY

Plaintiffs brought suit in 1965 seeking reapportionment of the Mississippi legislature on grounds that the current apportionment violated the Fourteenth and Fifteenth Amendments. In July 1966, the three-judge district court invalidated the 1962 apportionment of the legislature. *Connor* v. *Johnson,* 256 F. Supp. 962 (S.D. Miss.). That same year, the legislature enacted a new plan, and on March 3, 1967, the court held that plan unconstitutional and reapportioned the Senate and House of Representatives for the 1967 elections. 265 F. Supp. 492.

In 1971, the state enacted another reapportionment plan. That plan was held unconstitutional on May 18, 1971, and the district court formulated a plan to

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[2] *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey,* No. 75–104, certiorari granted, November 11, 1975; *Beer* v. *United States,* No. 73–1869, probable jurisdiction noted, 419 U.S. 822; *East Carroll Parish School Board* v. *Marshall,* No. 73–861, certiorari granted, 422 U.S. 1055. This court rendered its decision in *East Carroll Parish* on March 8, 1976, and its decision in *Beer* on March 30, 1976. *United Jewish Organizations of Williamsburgh,* however, is not scheduled for argument until next Term.

govern the 1971 elections. 330 F. Supp. 506. Most of the House districts and almost half of the Senate districts were constituted as multi-member districts.

The 1971 court-formulated plan was not final with respect to three counties: Hinds, Harrison, and Jackson. *Id.* at 519. Those counties accounted for one-fifth of the seats in both houses of the legislature. Although the district court expressed its reluctance over the use of multi-member districts in those counties because each would elect four or more senators or representatives, it concluded that there was not sufficient time before the 1971 elections to subdivide the three counties into single-member districts. *Ibid.* The court stated that it expected to appoint a special master to determine whether such subdivision would be feasible for the 1975 and 1979 elections. *Ibid.*

On a motion for a stay, this Court considered the plan formulated by the district court and on June 3, 1971, stayed the court's judgment until June 14, 1971. *Connor* v. *Johnson,* 402 U.S. 690. This Court directed the district court, "absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by that date." *Id.* at 692. The district court did not divide Hinds County into single-member districts because it found that there were insurmountable difficulties. 330 F. Supp. 521.

After the 1971 elections, this Court considered an appeal challenging the constitutionality of the 1971 court-formulated reapportionment plan. *Connor* v. *Williams,* 404 U.S. 549. Noting, with approval, that the district court had retained jurisdiction over plans

for Hinds, Harrison and Jackson Counties and had stated that a special master would be appointed in January 1972 to consider subdividing those counties into single-member districts, this Court directed that "[s]uch proceedings should go forward and be promptly concluded." *Id.* at 551. This Court declined to consider the prospective validity of the 1971 plan until proceedings were completed in the district court and a final judgment was entered respecting the entire state. *Id.* at 551–552. Without disturbing the 1971 elections, this Court vacated the district court judgment and remanded for proceedings consistent with its opinion. *Id.* at 552. The district court did not appoint a special master (Pet. App. 73a–74a).

The Mississippi legislature, in April 1973, adopted a reapportionment plan. *Connor* v. *Waller,* 396 F. Supp. 1308, 1310. Plaintiffs filed timely objections to the 1973 plan and requested a hearing. *Id* at 1310; Pet. App. 76a. The hearing was held in February 1975. 396 F. Supp. at 1310. After the hearing, the state, in April 1975, adopted new legislation (*id.* at 1311), differing from the 1971 court-formulated plan only with respect to Harrison, Hinds and Jackson Counties. Despite the changes, these counties remained multi-member districts. The district court dismissed plaintiffs' complaint and directed the filing of an amended complaint addressing the 1975 legislation. *Id.* at 1311. Plaintiffs promptly filed an amended complaint, and in May 1975 the district court entered judgment approving the 1975 legislative plan. *Connor* v. *Waller,* 396 F. Supp. 1308.

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On June 5, 1975, this Court reversed the three-judge court decision of May 22, 1975. *Connor* v. *Waller,* 421 U.S. 656. This Court held that the 1975 legislative acts would not be effective as laws until they were cleared in accord with Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. 1973c, and that the district court erred in deciding constitutional challenges to the acts based upon claims of racial discrimination. The reversal of the district court decision was, however,

> without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell,* 410 U.S. 315 (1973), *Connor* v. *Williams,* 404 U.S. 549 (1972), and *Chapman* v. *Meier,* 420 U.S. 1 (1975).

421 U.S. at 656.

On June 9, 1975, Mississippi submitted the 1975 acts to the Attorney General for his consideration under Section 5. The Attorney General, on June 10, 1975, interposed an objection to the acts on the ground that Mississippi had failed to show that they did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race (Pet. 6 n. 1).

The district court then held a hearing on June 20, 1975, to determine under what plan the 1975 elections should be held (Pet. App. 84a). The original plaintiffs and the United States objected to the composition of certain legislative districts as drawn in the 1971 court

plan and the 1975 legislative plan on the ground that those districts unconstitutionally diluted black voting strength. The original plaintiffs also objected to the inclusion of multi-member districts in a court-fashioned plan and to malapportioned districts.

In an order dated June 25, 1975, the district court advised the parties that it intended to formulate a "temporary plan for the election of Senators and Representatives for the 1975 elections ONLY," finding that there was insufficient time to formulate a final plan prior to the August 1975 primaries (Pet. App. 84a–85a). The court stated (Pet. App. 85a), however, that it intended without unnecessary delay to formulate a permanent plan for the election of legislators in the quadrennial elections of 1979. When that shall have "been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the U.S."

The court also requested that the parties amplify their objections to the existing plans before it implemented a temporary plan (Pet. App. 84a). After the parties submitted such objections, the court, by orders dated July 8, 1975, and July 11, 1975, formulated the temporary plan (Pet. App. 26a–54a). The court also ordered the parties to file alternative plans for the permanent reapportionment of the state legislature (Pet. App. 52a–53a).

Private plaintiffs, on July 21, 1975, and the United States, on July 24, 1975, filed motions to alter or amend judgment, pursuant to Rule 59, Fed. R. Civ. P. (Pet. App. 6a–7a, 8a–23a). Both motions requested

that the district court establish a specific date by which a permanent plan would be established and a definite schedule for special elections. Private plaintiffs asked the district court to order into effect a permanent plan by February 1, 1976, and to order such special elections as are necessary to cure defects in the temporary plans, such elections to coincide with the November 1976 presidential elections. As grounds for those motions, the plaintiffs detailed the legal deficiencies they found in the temporary plan.

By order of August 1, 1975, the district court ruled on plaintiffs' motions (Pet. App. 4a–5a). While declining to establish a deadline for approval of a final plan, the court emphasized "its firm determination to have this matter out of the way before February 1, 1976," and its expectation that it would "direct that [any required special elections] shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections, as far as possible" (*ibid.*).

In light of the proximity of the August 12 primary elections, the district court's indication that it intended to take prompt action on formulation of a final plan and scheduling special elections, if necessary, and this Court's prior indication, in *Connor* v. *Williams, supra,* that it wished to rule only on a final plan, the United States did not appeal from the district court's order establishing a temporary plan.

In October 1975, private plaintiffs and the United States submitted proposals for a final plan (Pet. App. 89a–90a). On October 24, 1975, the district court

ordered the United States to compile and submit to the court data respecting the November elections (Pet. App. 89a–90a). When the data were compiled, the United States moved, on January 26, 1976, to establish February 10, 1976, as the date for hearing on the proposed permanent plan (Pet. App. 3a). The court, on January 29, 1976, denied the motion, deferring further hearing and decision until this Court rules in three pending cases (Pet. App. 1a–2a). See n. 2, *supra.*

C. THE TEMPORARY PLAN

The temporary plan (Pet. App. 26a–54a), formulated by the district court's orders of July 8 and July 11, 1975, thus remains in effect. The plan for the Senate contains 14 multi-member districts,[3] electing 53.85 percent of the Senate membership (28 of 52 Senators) (Pet. App. 46a–47a). For the House 42 of 84 districts are multi-member, electing 72.13 percent of the House membership (88 of the 122 representatives) (Pet. App. 48a–52a). Five Senate districts,[4] electing eight Senators, have black voting age population majorities.[5] In the House, twelve

[3] Districts which are subdistricts of a floterial district (but not the floater district) are included as multi-member districts.

[4] Districts 10, 11, 12, 13, 15.

[5] These statistics are found in and computed from United States Bureau of the Census, *1970 Census of Population*, Vol. I, Characteristics of Population, Part 26, Mississippi, Table 35 Age by Race and Sex for Counties, and United States Bureau of the Census 1970 Summary Tapes, Files A and B. Out of 82 counties in Mississippi, the black voting age population exceeds 50 percent in 17. The voting age population of the state is 30.94 percent black.

districts, electing 20 representatives, have black voting age majorities.[6] Of these districts, two in the Senate and two in the House have black voting age population majorities of less than 52 percent.

The temporary plan is similar to the 1971 court-ordered plan—vacated by this Court so that a permanent plan could be formulated—and the 1975 legislative plan—objected to by the Attorney General under Section 5. For the Senate, it varies from the 1971 court plan and the 1975 legislative plan (which are identical with respect to the Senate) in only two districts.[7] With respect to the House of Representatives, the temporary plan makes changes from the 1971 court plan in thirteen districts[8] and from the 1975 legislative plan in twelve districts.[9]

For several districts, the court acknowledged that additional changes might be necessary in the formula-

[6] Districts 3A, 11, 12, 13, 14, 16, 17, 28, 31C, 31D, 31F, 32.

[7] Districts 22 (Hinds County) and 27 (Jones, Covington, Jefferson Davis, Lawrence, and Marion Counties).

[8] Districts changed were: 1, 3, 4, 11, 23, 25, 28, 31, 35, 42, 43, 45, 46.

[9] The districts changed were the same as those listed in footnote 8, *supra*, except there was no change for District 45.

The changes made by the court from the earlier plans failed to satisfy most of the objections which the United States presented to the court. The United States objected to 16 Senate Districts (Districts 1, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22, 23, 24, 25). The temporary plan changed only District 22 (Hinds County).

The United States also presented to the district court objections to 16 districts for the House of Representatives (Districts 3, 9, 14, 15, 17, 23, 24, 28, 29, 30, 32, 33, 34, 37, 39, 40). The court made changes in only three of those districts (Districts 3, 23, 28).

tion of a final plan. The court made specific statements about five House districts that indicate that it found inadequacies, but was not fashioning new districts either because adequate data were not then available, or the court had been unable to devise a satisfactory plan for the particular district.[10] It also indicated that

[10] District 14: "The Department of Justice says that this County could be divided into three single-member districts in such a fashion as to improve the chances of electing a black representative, but for lack of adequate data conforming to precinct lines this cannot now be done. The Court expects to give the division of Bolivar County further study for the permanent plan." (Pet. App. 33a–34a.)

District 15: "In the formulation of a permanent plan, with adequate data, this district should include some, if not all, single-member districts." (Pet. App. 36a, 39a.)

District 17: "With appropriate data the district should be susceptible to division, reducing its three member status." (Pet. App. 34a.)

District 24: "Kemper County is 54.84% black and is combined in a four Representative district [no. 24] with Lauderdale, with one of the four being required to be a resident of Kemper. The size of this district must be reduced."

"The legislative district status of these two geographically isolated black counties [Kemper and Noxubee] was the subject of extended discussion in the informal court-counsel conference of July 7, 1975. * * * No presently viable plan was suggested. * * * We have concluded that there are no presently viable answers to this peculiar situation, so we leave it as it is, with top priority when we come to consider the permanent plan." (Pet. App. 36a, 41a.)

District 30: "Claiborne might be joined with some identifiable portion of Warren County for a single-member district. However, by order of a three-judge court in a reapportionment case, Warren County presently has no validly existing Supervisor Beats." (Pet. App. 34a.)

the change it made for one House district was not sufficient for the final plan."[11]

Furthermore, the court stated that it was unable to devise a satisfactory plan for Senate districts 18 and 19 prior to the 1975 elections (Pet. App. 44a). Regarding Senate district 25, the court stated that there was "not enough danger of [racial dilution] to justify altering the district within less than thirty days of the election" (Pet. App. 45a).

Due to this Court's mandate in *Connor* v. *Williams*, 404 U.S. 549, that the district court retain jurisdiction to consider the feasibility of devising single-member districts for Hinds, Harrison and Jackson Counties, the district court treated these counties separately. But the temporary plan does not provide all single-member districts for these counties. Harrison County elects three Senators at-large, and Jackson County elects two Senators at-large (Pet. App. 47a).

ARGUMENT

THE DISTRICT COURT SHOULD BE REQUIRED TO ENTER A FINAL REAPPORTIONMENT PLAN AND ORDER SPECIAL ELECTIONS

More than ten years have passed since plaintiffs initiated this litigation seeking reapportionment of

[11] Regarding House district 23, the court said (Pet. App. 40a–41a):
"Noxubee County is now combined with Oktibbeha County for the election of a Senator and for the election of two Representatives. As to the election of a Representative, this is not satisfactory because Oktibbeha County has 28,752 people, twice that of Noxubee. Noxubee is 65.77% black, Oktibbeha is 65.21% white." See also the next to the last paragraph of footnote 10, *supra*, which is applicable to district 23.

the Mississippi legislature. All involved, including the court below, recognize that until the legislature is reapportioned consistently with the Fourteenth and Fifteenth Amendments, the people of Mississippi will continue to suffer irreparable injury to their rights as voters. Yet every effort to bring this litigation to a final judgment has been frustrated. In the meantime, temporary plans have been implemented which perpetuate the violations the suit was intended to remedy. The latest development—a refusal to bring the case to final decision pending further guidance from this Court in other cases—is consistent with this pattern. Like past delays, it is wholly unjustified.

Whatever might have been said earlier about the impropriety of the district court's refusal to decide this case, the fact is that two of the three decisions it was awaiting have been announced. The third case will not be decided until next Term, and is in any event unlikely to provide substantial further guidance for this case.

East Carroll Parish School Board v. *Marshall,* No. 73–861, was decided on March 8, 1976. It highlights the inadequacy of the temporary plan the district court has left in effect. That plan provides for numerous multi-member districts. *East Carroll* reemphasizes the previously established doctrine that in court ordered reapportionment, "single-member districts are to be preferred absent unusual circumstances" (slip op. at p. 4).

Beer v. *United States,* No. 73–1869, was decided on March 30, 1976. It involved the standards for testing

the redistricting of city council districts under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. It did not depart in any way from previous decisions establishing the constitutional standards which govern the reapportionment of a state legislature under the Fourteenth and Fifteenth Amendments.

East Carroll Parish and *Beer* thus contain nothing to justify delay by the district court in carrying out its responsibility to apply this Court's decisions so as to bring about a constitutionally valid reapportionment of the Mississippi legislature.

United Jewish Organizations of Williamsburgh, Inc. v. *Carey*, No. 75–104, certiorari granted, November 11, 1975 (hereinafter, "*Williamsburgh*"), will not be argued until next Term. This fact alone renders unjustified any further delay in the instant case. For if a final plan is not adopted and special elections held pursuant to it by the November 1976 presidential elections, it will be 1978 or later before the people of Mississippi have a properly constituted legislature. The irreparable injury the state's voters will suffer by further delay in the implementation of a lawfully adequate reapportionment plan far outweighs anything that might be gained by waiting for the decision in *Williamsburgh*. That case involves a challenge by a particular element of the white majority in Kings County, New York, to a redistricting plan adopted by the New York legislature which splits the plaintiffs' ethnic community between two assembly districts, each of which has a non-white majority, and between two state senate districts, one of which has a non-white

majority. See *United Jewish Organizations of Williamsburgh, Inc.* v. *Wilson*, 510 F. 2d 512, 517–518 (C.A. 2). No similar claim is involved in the present case.

Because reapportionment litigation involves fundamental personal rights,[12] such litigation should not be held in limbo—particularly where, as here, the existing apportionment has been shown to violate established constitutional rights—while additional, non-controlling cases are presented in this Court. Every decennial census creates new redistricting problems. Congressional elections are held every two years and state legislative elections may be held biennially or, as in Mississippi, quadrennially. For these reasons, the district courts should decide reapportionment litigation promptly in the light of existing precedents. Otherwise the rights of the electorate to fair and effective representation under the one-person, one-vote rule, and to freedom from invidious racial discrimination, dilution or minimization or cancellation of minority voting strength,[13] may be lost while litigation drags on, one election succeeds another, and improperly apportioned legislatures continue to sit. That is the present situation in Mississppi.

There is no mystery about the constitutional and equitable requirements for reapportionment of a state legislature by a court. The basic criteria are estab-

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[12] *Reynolds* v. *Sims*, 377 U.S. 533, 554–555, 565–568.

[13] *White* v. *Regester*, 412 U.S. 755, 765–770; *Whitcomb* v. *Chavis*, 403 U.S. 124, 143–144; *Fortson* v. *Dorsey*, 379 U.S. 433, 439; *Burns* v. *Richardson*, 384 U.S. 73, 86–89; cf. *Gomillion* v. *Lightfoot*, 364 U.S. 339.

lished. They require reasonable numerical equality of resident populations among the districts prescribed, with allowance for deviation made necessary by geographic features and the boundaries of political subdivisions;[14] avoidance of any action which invidiously cancels out, dilutes or minimizes the voting strength of minority groups in the entity being restructured;[15] and, in any court-ordered plan, a preference for single-member districts, absent a clear showing of special justification for the use of multi-member districting. *East Carroll Parish, supra.*

There is no reason why these criteria cannot be implemented in Mississippi. The need for prompt decision is urgent. The temporary plan adopted by the district court is inconsistent with *East Carroll Parish,* permits population variances among districts sharply departing from the criteria approved by this Court under the Fourteenth Amendment, and continues "invidiously to cancel out or minimize the voting strength" of black voters in Mississippi. *White* v. *Regester,* 412 U.S. 755, 765. Because Mississippi has a long history of excluding blacks from the political process (*United States* v. *Mississippi,* 380 U.S. 128), the district court has a duty to decree relief "which will so far as possible eliminate the discrimi-

[14] Compare *Mahan* v. *Howell*, 410 U.S. 315, and *Gaffney* v. *Cummings*, 412 U.S. 735, with *Whitcomb* v. *Chavis*, 403 U.S. 124, 161–163, *Swann* v. *Adams*, 385 U.S. 440, and *Kilgarlin* v. *Hill*, 386 U.S. 120.

[15] See cases cited in n. 13, *supra.*

natory effects of the past as well as bar like discrimination in the future." *Louisiana* v. *United States,* 380 U.S. 145, 154.

Nevertheless, with the exception of Hinds County, the district court has focussed only on those districts that include counties with a black population majority. It apparently assumes that there can be no unconstitutional dilution of black voting strength in white majority counties. But *White* v. *Regester, supra,* teaches that where there is a history of discrimination and racial bloc voting, submergence of a substantial racial minority population into a larger majority-dominated district, by means of multi-member districting, may improperly dilute the voting strength of the racial minority. Indeed, the district court itself recognized that its temporary plan did not fully eliminate dilution. See Statement, pp. 11–12, *supra.* Yet, despite its acknowledgement that six house districts (Numbers 14, 15, 17, 23, 24, and 30) involve improper dilution of minority voting strength, it has delayed fashioning new plans for them. Moreover, the temporary plan appears to contain deviations of more than 62.963 percent in the House and 20.292 percent in the Senate for floterial districts, and 19.729 percent in the House, and 18.903 percent in the Senate, for non-floterial districts (Pet. 6–7). Since "[a] court ordered plan * * * must be held to higher standards than a State's own plan" (*Chapman* v. *Meier,* 420 U.S. 1, 26), the district court has an obligation to elucidate why such variation is justified.

Given the inadequacies of the temporary plan, special elections are required. *Town of Sorrento* v. *Reine,* No. 75–93, decided April 26, 1976; *Hadnott* v. Amos, 394 U.S. 358.[16] Indeed, the district court has indicated that it would order special elections in districts which were improperly constituted (Statement, p. 7, *supra*). Unless a final plan is formulated promptly and special elections held thereunder, the people of Mississippi will continue to be denied a properly constituted legislature for a substantial additional time. The district court's failure to take the steps necessary to prevent this result frustrates the purpose of this Court's earlier decision in this case, *Connor* v. *Williams,* 404 U.S. 549, directing the formulation of a final, reviewable plan.

In *Connor* v. *Williams, supra,* this Court vacated the district court's judgment implementing the 1971 court-formulated reapportionment plan insofar as it applied to the 1975 elections. The Court declined at that time to determine the constitutionality of that plan because it was incomplete. *Id.* at 551. The Court's mandate contemplated that the district court would formulate a final plan for the 1975 elections which could then be reviewed here. But the district court did not attempt to formulate a final plan for 1975. Instead, when the Mississippi legislature reapportioned itself in 1973 and 1975, the district court

[16] See also *Keller* v. *Gilliam*, 454 F. 2d 55 (C.A. 5); *Toney* v. *White*, 488 F. 2d 310 (C.A. 5) (*en banc*); *Hall* v. *Issaquena County*, 453 F. 2d 404 (C.A. 5); *Hamer* v. *Campbell*, 358 F. 2d 215 (C.A. 5), certiorari denied, 385 U.S. 851.

directed its attention to those enactments and approved the 1975 legislation. 396 F. Supp. 1308. The district court's judgment approving the 1975 legislative plan was then vacated in *Connor* v. *Waller,* 421 U.S. 656, because that plan had not been precleared under Section 5 of the Voting Rights Act. At least by then it became incumbent upon the district court to formulate a final plan of its own. Whether it could have done so in time for the 1975 legislative elections in Mississippi is now a moot question. There has, however, been adequate time for the district court to formulate a plan reapportioning the state legislature, and to order special elections under that plan which will coincide with the November 1976 presidential and congressional elections. There is still time for it to do so under an expedited schedule.

As matters now stand, the district court refuses to decide the long-pending case before it, thereby frustrating this Court's mandate in *Williams.* The decisions in *East Carroll Parish* and *Beer,* and the lack of any reason to believe that the decision in *Williamsburgh* will provide meaningful guidance here, demonstrate that there is no reason for further delay. We do not believe, however, that this Court need issue a writ of mandamus, even though its issuance would be justified on this record. Cf. *Thermtron Products, Inc.* v. *Hermansdorfer,* No. 74–206, decided January 20, 1976. Denial of the writ with an explanation that the district court is expected to perform its duty forthwith would presumably be sufficient. Either by that means

or by issuance of the writ, the district court should be instructed to proceed to a prompt decision and decree ordering special elections.

CONCLUSION

For the reasons stated, the motion for leave to file a petition for a writ of mandamus should be granted, and the district court should be instructed to adopt a final plan for the reapportionment of the Mississippi legislature, and to order special elections to coincide with the November 1976 presidential and congressional elections, or to be held at the earliest practicable date thereafter.

Respectfully submitted.

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